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CLERK, U.S. DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF
22 AMERICA,

23 Plaintiff,

24 v.

25 GWEN CAMPBELL TRUST
26 1995, GWEN CAMPBELL,
27 individually and as trustee of the
28 GWEN CAMPBELL TRUST
29 1995, PHIL CAMPBELL AND
DIANE COTE FAMILY TRUST,
and DIANE COTE, as Trustee of
the PHIL CAMPBELL AND
DIANE COTE FAMILY TRUST,
Defendants.

CIVIL ACTION NO. _____

CONSENT DECREE

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

I. <u>BACKGROUND</u>	<u>-1-</u>
II. <u>JURISDICTION</u>	<u>3</u>
III. <u>PARTIES BOUND</u>	<u>3</u>
IV. <u>DEFINITIONS</u>	<u>3</u>
V. <u>GENERAL PROVISIONS</u>	<u>7</u>
VI. <u>ACCESS AND INSTITUTIONAL CONTROLS</u>	<u>9</u>
VII. <u>REMEDY REVIEW</u>	<u>16</u>
VIII. <u>REPORTING REQUIREMENTS</u>	<u>18</u>
X. <u>FORCE MAJEURE</u>	<u>19</u>
XI. <u>DISPUTE RESOLUTION</u>	<u>21</u>
XII. <u>STIPULATED PENALTIES</u>	<u>24</u>
XIII. <u>COVENANTS NOT TO SUE BY PLAINTIFFS</u>	<u>28</u>
XIV. <u>COVENANTS BY SETTLING DEFENDANTS</u>	<u>34</u>
XV. <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u>	<u>36</u>
XVI. <u>ACCESS TO INFORMATION</u>	<u>38</u>
XVII. <u>RETENTION OF RECORDS</u>	<u>39</u>
XVIII. <u>NOTICES AND SUBMISSIONS</u>	<u>40</u>
XVIII. <u>EFFECTIVE DATE</u>	<u>41</u>
XIX. <u>RETENTION OF JURISDICTION</u>	<u>42</u>
XX. <u>APPENDICES</u>	<u>42</u>
XXI. <u>MODIFICATION</u>	<u>42</u>
XXII. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	<u>43</u>
XXIII. <u>SIGNATORIES/SERVICE</u>	<u>43</u>
XXIV. <u>FINAL JUDGMENT</u>	<u>44</u>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), has concurrently filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia, performance of certain response work by the defendants at the Waste Disposal, Inc. (“WDI”) Superfund Site in Santa Fe Springs, California, consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the California Department of Toxic Substances Control (“DTSC”) and the Hazardous Substance Account (collectively referred to as the “State”) on April 10, 2001, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration, the Department of the Interior, and the natural resource trustees for the State of California on October 5 and 9, 2001, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal and state trusteeship.

E. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that

1 the release or threatened release of hazardous substances at or from the Site
2 constitutes an imminent or substantial endangerment to the public health or
3 welfare or the environment.

4 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
5 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix
6 B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27620.
7

8 G. In response to a release or a substantial threat of a release of
9 hazardous substances at or from the Site, EPA commenced on December 22, 1987,
10 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to
11 40 C.F.R. § 300.430.

12 H. EPA completed a Remedial Investigation ("RI") Report in November
13 1990, and several potentially responsible parties ("PRPs") at the Site completed a
14 Supplemental Feasibility Study ("SFS") Report in May 2001.
15

16 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
17 published notice of the completion of the SFS and of the proposed plan for
18 remedial action on May 31, 2001, in a major local newspaper of general
19 circulation. EPA provided an opportunity for written and oral comments from the
20 public on the proposed plan for remedial action. A copy of the transcript of the
21 public meeting is available to the public as part of the administrative record upon
22 which the Regional Administrator based the selection of the response action.

23 J. The decision by EPA on the remedial action to be implemented at the
24 Site is embodied in a final Amended Record of Decision ("Amended ROD"),
25 executed on June 21, 2002, on which DTSC has given its concurrence. The
26 Amended ROD includes a responsiveness summary to the public comments.
27 Notice of the final plan was published in accordance with Section 117(b) of
28 CERCLA.
29

1 K. EPA has reviewed documents submitted by Settling Defendants to
2 determine whether Settling Defendants are financially able to pay response costs
3 incurred and to be incurred at the Site. Based upon these documents, EPA has
4 determined that Settling Defendants have no financial ability to pay for response
5 costs incurred and to be incurred at the Site.

6 L. The Parties recognize, and the Court by entering this Consent Decree
7 finds, that this Consent Decree has been negotiated by the Parties in good faith and
8 implementation of this Consent Decree will expedite the cleanup of the Site and
9 will avoid prolonged and complicated litigation between the Parties, and that this
10 Consent Decree is fair, reasonable, and in the public interest.
11

12 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

13 II. JURISDICTION
14

15 1. This Court has jurisdiction over the subject matter of this action
16 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
17 9613(b). This Court also has personal jurisdiction over the Settling Defendants.
18 Solely for the purposes of this Consent Decree and the underlying complaints,
19 Settling Defendants waive all objections and defenses that they may have to
20 jurisdiction of the Court or to venue in this District. Settling Defendants shall not
21 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and
22 enforce this Consent Decree.

23 III. PARTIES BOUND
24

25 2. This Consent Decree applies to and is binding upon the United States
26 and the Settling Defendants and their heirs, successors and assigns. Any change in
27 ownership or corporate status of Settling Defendants including, but not limited to,
28 any transfer of assets or real or personal property, shall in no way alter such
29 Settling Defendants' responsibilities under this Consent Decree, except as

1 otherwise provided in Subparagraph 9.b.

2
3
4 IV. DEFINITIONS

5 3. Unless otherwise expressly provided herein, terms used in this
6 Consent Decree which are defined in CERCLA or in regulations promulgated
7 under CERCLA shall have the meaning assigned to them in CERCLA or in such
8 regulations. Whenever terms listed below are used in this Consent Decree or in
9 the appendices attached hereto and incorporated hereunder, the following
10 definitions shall apply:

11 “Amended Record of Decision” or “Amended ROD” shall mean the EPA
12 Amended Record of Decision at the Site, signed on June 21, 2002, by the
13 Regional Administrator, EPA Region IX, or his/her delegate, and all attachments
14 thereto. The Amended ROD is attached as Appendix A.

15 “CERCLA” shall mean the Comprehensive Environmental Response,
16 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

17 “Consent Decree” shall mean this Decree and all appendices attached hereto
18 (listed in Section XX). In the event of conflict between this Decree and any
19 appendix, this Decree shall control.

20
21 “Day” shall mean a calendar day unless expressly stated to be a working
22 day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal
23 holiday. In computing any period of time under this Consent Decree, where the
24 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
25 until the close of business of the next working day.

26 “DTSC” shall mean the California Department of Toxic Substances Control
27 and any successor departments or agencies.

28
29 “Effective Date” shall be the effective date of this Consent Decree as

1 provided in Paragraph 62.

2 “Environmental Restriction Covenant” shall mean a restrictive covenant
3 under California law, running with the land, that (i) grants a right of access for the
4 purpose of conducting any activity related to the response actions described in the
5 Amended ROD, including, but not limited to, those activities listed in
6 Paragraph 10.a of this Consent Decree, and (ii) grants the right to enforce the
7 land/water use restrictions listed in Paragraph 11.a of this Consent Decree, or
8 other restrictions that EPA determines are necessary to implement, ensure non-
9 interference with, or ensure the protectiveness of the remedial measures to be
10 performed in accordance with the Amended ROD; (iii) provides that EPA and
11 DTSC shall be third party beneficiaries of the environmental restriction covenant
12 with rights to enforce the environmental restriction covenant; and (iv) is in the
13 form of the document attached as Appendix C.
14

15 “EPA” shall mean the United States Environmental Protection Agency and
16 any successor departments or agencies of the United States.

17 “Financial Information” shall mean all documents and other information
18 pertaining to the financial ability to pay of the Settling Defendants which the
19 Settling Defendants have provided to the United States prior to their signature date
20 on this Consent Decree.
21

22 “Interest” shall mean interest at the rate specified for interest on investments
23 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
24 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
25 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
26 interest accrues. The rate of interest is subject to change on October 1 of each
27 year.

28 “National Contingency Plan” or “NCP” shall mean the National Oil and
29

1 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
2 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and
3 any amendments thereto.

4 “Paragraph” shall mean a portion of this Consent Decree identified by an
5 arabic numeral or an upper case letter.

6
7 “Parties” shall mean the United States and the Settling Defendants.

8
9 “Performance Standards” shall mean those cleanup standards, standards of
10 control, response actions, and other substantive requirements, and criteria or
11 limitations set forth in the Amended ROD.

12 “Plaintiff” shall mean the United States.

13
14 “Property” shall mean that portion of the WDI Superfund Site owned by
15 Settling Defendants and described more particularly in Appendix D.

16 “Remedial Action” shall mean the actions taken to implement the remedy
17 for the Site pursuant to the Amended ROD.

18
19 “Response Actions” shall mean any and all removal and remedial actions
20 and all enforcement activities related thereto.

21 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
22 §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

23
24 “Section” shall mean a portion of this Consent Decree identified by a
25 Roman numeral.

26 “Settling Defendants” shall mean the Gwen Campbell Trust 1995, Gwen
27 Campbell, individually and as trustee of the Gwen Campbell Trust 1995, the Phil
28 Campbell and Diane Cote Family Trust, and Diane Cote, as trustee of the Phil
29 Campbell and Diane Cote Family Trust.

1 "Site" shall mean the WDI Superfund Site, encompassing approximately 38
2 acres, located at Los Nietos Road at Greenleaf Avenue in Santa Fe Springs, Los
3 Angeles County, California, and depicted generally on the map attached as
4 Appendix B.

5 "State" shall mean the State of California.

6
7 "United States" shall mean the United States of America.

8 "Waste Material(s)" shall mean (1) any "hazardous substance" under
9 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or
10 contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste"
11 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous
12 substance" under California Health and Safety Code §§ 25316 and 25317; and (5)
13 all material identified as waste or sump material in site investigations conducted
14 prior to the Effective Date of this Consent Decree, irrespective of whether it is
15 classified as a hazardous substance, pollutant or contaminant, or solid waste under
16 the above statutes.

17
18 "WDIG" shall mean the Waste Disposal, Inc. Group.

19 "WDIG Site Trust" shall mean the trust established by certain other PRPs
20 pursuant to the Consent Decree lodged in this Court in Civil Action No. 03-1593
21 WJR. The WDIG Site Trust shall be the covenantee of the Environmental
22 Restriction Covenant.

23
24 "WDI Special Account" shall mean the special account established at the
25 Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3),
26 within the EPA Hazardous Substance Superfund.

27 "Work" shall mean all activities Settling Defendants are required to perform
28 under this Consent Decree, except those required by Section XVII (Retention of
29

1 Records).

2
3 V. GENERAL PROVISIONS

4 4. Objectives of the Parties. The objectives of the Parties in entering
5 into this Consent Decree are to protect public health or welfare or the environment
6 at the Site by the implementation of and compliance with access agreements and
7 institutional controls at the Site by the Settling Defendants, and to resolve the
8 claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

9 5. Commitments by Settling Defendants.

10
11 a. Settling Defendants shall perform the Work in accordance with
12 this Consent Decree and the Amended ROD, including, but not limited to,
13 granting access rights and implementing institutional controls in the form of an
14 Environmental Restriction Covenant on the Property at the Site, owned by Settling
15 Defendants, as required herein. Settling Defendants shall ensure compliance with
16 the Environmental Restriction Covenant by any tenants or other persons on the
17 Property during any time that Settling Defendants own or control the Property.

18 b. The obligations of Settling Defendants to perform the Work
19 under this Consent Decree are joint and several. In the event of the insolvency or
20 other failure of any one or more Settling Defendants to implement the
21 requirements of this Consent Decree, the remaining Settling Defendant shall
22 complete all such requirements.

23
24 c. Settling Defendants shall make best efforts to cooperate with
25 any persons implementing all or any portion of the Remedial Action pursuant to
26 the Amended ROD under EPA's oversight. Best efforts shall include, but not be
27 limited to, actions to facilitate any relocations on or from the Property that may be
28 required by EPA to implement the Remedial Action.

29

1 6. Certification of Settling Defendants. By signing this Consent Decree,
2 each Settling Defendant certifies individually, that, to the best of its knowledge
3 and belief, it has:

4 a. conducted a thorough, comprehensive, good faith search for
5 documents, and has fully and accurately disclosed to EPA all information
6 currently in its possession, or in the possession of its officers, directors,
7 employees, contractors, agents, trustees, or beneficiaries, which relates in any way
8 to the ownership, operation, or control of the Site, or to the ownership, possession,
9 generation, treatment, transportation, storage, or disposal of a hazardous
10 substance, pollutant, or contaminant at or in connection with the Site, except to the
11 extent that a Settling Defendant has asserted that certain documents or information
12 are privileged under the attorney client privilege. If a Settling Defendant has
13 asserted such a privilege, Settling Defendant certifies that it has provided Plaintiff
14 with the following: (1) the title of the document, record, or information; (2) the
15 date of the document, record, or information; (3) the name and title of the author
16 of the document, record, or information; (4) the name and title of each addressee
17 and recipient; (5) a description of the contents of the document, record, or
18 information; and (6) the privilege asserted by Settling Defendant;

19
20 b. submitted to EPA Financial Information that fairly, accurately,
21 and materially sets forth its financial circumstances, and that those circumstances
22 have not materially changed between the time the Financial Information was
23 submitted to EPA and the time Settling Defendant executes this Consent Decree;

24 c. not altered, mutilated, discarded, destroyed or otherwise
25 disposed of any records, documents, or other information relating to its potential
26 liability regarding the Site after notification of potential liability or the filing of a
27 suit against it regarding the Site; and

28
29 d. fully complied with any and all EPA requests for information

1 regarding the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

2
3 7. Compliance With Applicable Law. All activities undertaken by
4 Settling Defendants pursuant to this Consent Decree shall be performed in
5 accordance with the requirements of all applicable federal and state laws and
6 regulations. Settling Defendants must also comply with all applicable or relevant
7 and appropriate requirements of all federal and state environmental laws as set
8 forth in the Amended ROD. The activities conducted pursuant to this Consent
9 Decree, if approved by EPA, shall be considered to be consistent with the NCP.

10 8. Permits.

11 a. This Consent Decree is not, and shall not be construed to be, a
12 permit issued pursuant to any federal or state statute or regulation.
13

14 9. Notice to Successors-in-Title.

15 a. At least 30 days prior to the conveyance of any interest in
16 property located within the Site including, but not limited to, fee interests,
17 leasehold interests, and mortgage interests, the Settling Defendant(s) conveying
18 the interest shall give the grantee written notice of (i) this Consent Decree and (ii)
19 the Environmental Restriction Covenant, attached as Appendix C. At least 30
20 days prior to such conveyance, the Settling Defendant(s) conveying the interest
21 shall also give written notice to EPA of the proposed conveyance, including the
22 name and address of the grantee, and the date on which notice of the Consent
23 Decree and Environmental Restriction Covenant, was given to the grantee.
24

25 b. In the event of any such conveyance, the Settling Defendants'
26 obligations under this Consent Decree, including, but not limited to, their
27 obligation to abide by the land/water use restrictions described in Paragraph 11.a,
28 shall continue to be met by the Settling Defendants, except for those obligations
29 described in Paragraphs 10, 11.a(13), 11.a(21), 11.a(22), 11.a(23), 11.a(24), and

1 18.c.

2
3 VI. ACCESS AND INSTITUTIONAL CONTROLS

4 10. Settling Defendants shall:

5 a. commencing on the date of lodging of this Consent Decree,
6 provide the United States, its representatives, including EPA and its contractors,
7 and any PRPs conducting Remedial Action at the Site, including their agents and
8 contractors, with access at all reasonable times to the Property for the purpose of
9 conducting any response activity related to the Site including, but not limited to,
10 the following activities:

11
12 (1) Monitoring of investigation, removal, remedial or other
13 response actions at the Site;

14 (2) Verifying any data or information submitted to the
15 United States;

16
17 (3) Conducting investigations relating to contamination at or
18 near the Site;

19 (4) Obtaining samples;

20
21 (5) Assessing the need for, planning, or implementing
22 additional response actions at or near the Site;

23 (6) Inspecting and copying records, operating logs, contracts,
24 or other documents maintained or generated by Settling Defendants or their
25 agents, consistent with Section XV (Access to Information);

26
27 (7) Assessing Settling Defendants' compliance with this
28 Consent Decree;

29

1 (8) Determining whether the Site or other property is being
2 used in a manner that is prohibited or restricted, or that may need to be prohibited
3 or restricted, by or pursuant to this Consent Decree.

4 (9) Installing, monitoring, and maintaining liquid,
5 groundwater, soil gas and other wells or probes; and
6

7 (10) Installing, monitoring, and operating any monitoring
8 and extraction system, including liquids and gas extraction systems.

9
10 11. Land Use Restrictions.

11 a. Settling Defendants shall, commencing on the date of lodging
12 of this Consent Decree, refrain from using the Site and Property in any manner
13 that would interfere with or adversely affect the implementation, integrity, or
14 protectiveness of the remedial measures implemented pursuant to the Amended
15 ROD. Settling Defendants shall comply with the following land/water use
16 restrictions:

17 (1) Placement of warning signs or other posted information
18 shall be allowed and, once posted, no removal or interference with such
19 signs or information shall be permitted.
20

21 (2) Placement of Site access controls, such as gates or
22 fencing, shall be allowed and shall not be damaged or circumvented.

23 (3) The Site or such other property shall not be used in any
24 manner that may interfere with or affect the integrity of the remedial cap or
25 other components of the remedy, as constructed pursuant to the Amended
26 ROD.
27

28 (4) Construction not approved by EPA that impacts any of
29 the remedial capping or other remedy components shall not occur.

1 (5) No interferences with or alterations to the grading,
2 vegetation and surface water and drainage controls shall be made.

3 (6) Portions of the Site or Property underlain by Waste
4 Materials or in soil gas noncompliance areas shall not be regraded.

5 (7) Areas of asphalt or concrete pavement shall not be
6 removed or improved.

7 (8) No penetrations through or interferences (including, but
8 not limited to, utility trench excavations, excavations for fence posts,
9 excavations for planting trees or large bushes, foundation excavations, and
10 foundation piles) with the remedial cap or any other areas with remedial
11 controls shall be made.

12 (9) Deep-rooting plants (plants whose root systems will
13 penetrate more than two feet below ground surface) shall not be planted.

14 (10) Settling Defendants or any other owner or user of the
15 Property shall obtain approval from EPA for settings of irrigation controls
16 in areas underlain by Waste Materials. Such settings shall not be changed
17 without the prior written approval of EPA in accordance with Paragraph
18 11.b.

19 (11) Drainage channels and pipes shall not be blocked,
20 rerouted or otherwise interfered with.

21 (12) No new openings shall be made in building floor slabs in
22 buildings located over Waste Materials or over soil gas noncompliance
23 areas.

24 (13) Integrity of existing and future foundations shall be
25 maintained in areas underlain by Waste Materials and in soil gas
26 areas.

1 noncompliance areas. All cracks or damage in such foundations shall be
2 reported to EPA and shall be repaired by the Settling Defendants.

3 (14) Indoor gas controls shall not be circumvented.
4

5 (15) Indoor gas sensors or alarms shall not be turned off or
6 interfered with.

7 (16) Soil gas control systems shall not be turned off or
8 interfered with.
9

10 (17) Monitoring points, including but not limited to
11 groundwater monitoring wells, soil gas probes, reservoir leachate collection
12 wells, soil gas vents, and survey monuments, shall not be blocked or
13 otherwise obstructed.

14 (18) Monitoring wells shall not be opened; nothing shall be
15 placed into the monitoring wells.
16

17 (19) Liquids recovery systems, liquids treatment systems, and
18 treated liquids storage facilities shall not be turned off or interfered with.

19 (20) Groundwater supply or monitoring wells shall not be
20 constructed.
21

22 (21) Owners of the Site or Property shall disclose all
23 land/water use restrictions to all tenants on the property.
24

25 (22) Settling Defendants shall inform EPA of the identities of
26 all tenants on the Property.

27 (23) During construction, excavation, or grading of any type
28 on the Property, Settling Defendants shall take measures to ensure that there
29 is no offsite migration of dust, odors or organic vapors. During such

1 activities, Settling Defendants shall take appropriate measures to protect the
2 health and welfare of onsite personnel and workers and to prevent offsite
3 impacts.

4 (24) Settling Defendants must obtain prior written approval
5 for all building or site modifications on the Property from EPA in
6 accordance with Paragraph 11.b.

7
8 (25) Settling Defendants shall not excavate Waste Materials
9 on the Site.

10 (26) No new construction shall occur on the Site without the
11 prior written approval of EPA in accordance with Paragraph 11.b and the
12 following requirements:

13
14 (a) New construction shall be supported by subsurface
15 explorations and analytical laboratory data to characterize the
16 construction area for the possible existence of Waste Materials.

17 (b) If Waste Materials are discovered in the
18 construction area, they shall be remediated or buildings and structures
19 must be appropriately designed to protect occupants.

20 (c) Appropriate worker and public health and safety
21 precautions, including but not limited to dust control, safety plans,
22 and other forms of worker protection, must be taken prior to approval
23 of construction.

24
25 (27) Boreholes, foundation piles, or other subsurface
26 penetrations into the reservoir or any other area of the site which could
27 create conduits allowing Waste Materials to migrate to groundwater shall
28 not be made.
29

1 (28) Construction workers shall be provided with appropriate
2 personal protective equipment while they are working at the site.

3 (29) Pesticides or herbicides shall not be applied to the
4 capped areas of the Site or to areas surrounding monitoring points, except as
5 approved by EPA.

6 (30) Use of any septic tanks on the Property shall be
7 discontinued and such tanks shall be decommissioned in accordance with
8 local regulations.

9 (31) The Site or such other property shall not be used or
10 redeveloped for residential use; use as a hospital, school for people aged 21
11 and under, or day care center; or other similar uses by sensitive receptors.

12 b. Any person seeking an exception to the land/water use
13 restrictions in Paragraph 11.a shall obtain the prior written approval of EPA. Any
14 person seeking an exception shall submit a request in writing to EPA, with all
15 necessary supporting documentation (such documentation may include appropriate
16 design documents, work plans, and/or calculations). EPA shall respond to such
17 request within a reasonable time, by: 1) providing written approval for the
18 exception; 2) requesting further information in support of the request; 3) providing
19 written approval of the exception with modification; or 4) denying the request.
20 The decision of EPA shall be final and shall not be subject to the dispute
21 resolution procedures of this Consent Decree or to judicial review.

22 12. Environmental Restriction Covenant.

23 a. Settling Defendants shall, within 30 days of entry of this
24 Consent Decree, submit to EPA for review and approval, with respect to the
25 Property, a current title insurance commitment or some other evidence of title
26 reasonably acceptable to EPA, which shows the Property to be free and clear of all
27
28
29

1 prior liens and encumbrances, other than the liens held by EPA on the Property
2 pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l) (except when those
3 liens or encumbrances are approved by EPA, or when, despite best efforts, Settling
4 Defendants are unable to obtain release or subordination of such prior liens or
5 encumbrances). "Best efforts" includes the payment of reasonable sums of money
6 in consideration of an agreement to release or subordinate a prior lien or
7 encumbrance.

8
9 b. Settling Defendants shall provide a copy of the Environmental
10 Restriction Covenant to the WDIG Site Trust for execution, at an address to be
11 provided by EPA, prior to Settling Defendants' recordation of the fully executed
12 Environmental Restriction Covenant.

13 c. Within 15 days of EPA's approval and acceptance of the title
14 evidence, Settling Defendants shall update the title search and, if it is determined
15 that nothing has occurred since the effective date of the commitment to affect the
16 title adversely, record the Environmental Restriction Covenant attached as
17 Appendix C with the Recorder's Office of Los Angeles County. Within 30 days of
18 recording the Environmental Restriction Covenant, Settling Defendants shall
19 provide EPA with a final title insurance policy, or other final evidence of title
20 acceptable to EPA, and a certified copy of the original recorded Environmental
21 Restriction Covenant showing the clerk's recording stamps.

22 d. If, after review of the final title insurance policy, or other final
23 evidence of title, and the certified copy of the original recorded Environmental
24 Restriction Covenant, EPA determines that any portion of the Work has not been
25 completed in accordance with this Consent Decree, EPA will notify Settling
26 Defendants in writing of the activities that must be undertaken by Settling
27 Defendants pursuant to this Consent Decree to complete the Work, provided,
28 however, that EPA may only require Settling Defendants to perform such activities
29

1 pursuant to this Paragraph to the extent that such activities are consistent with the
2 scope of the remedy selected in the Amended ROD. EPA will set forth in the
3 notice a schedule for performance of such activities consistent with the Consent
4 Decree. Settling Defendants shall perform all activities described in the notice in
5 accordance with the specifications and schedules established therein, subject to
6 their right to invoke the dispute resolution procedures set forth in Section XI
7 (Dispute Resolution).

8
9 13. If EPA determines that institutional controls in the form of state or
10 local laws, regulations, ordinances or other governmental controls are needed to
11 implement the remedy selected in the Amended ROD, ensure the integrity and
12 protectiveness thereof, or ensure non-interference therewith, Settling Defendants
13 shall cooperate with EPA's efforts to secure such governmental controls.

14 14. Notwithstanding any provision of this Consent Decree, the United
15 States retains all of its information gathering, inspection, and access authorities
16 and rights, as well as all of its rights to require land use restrictions, including
17 enforcement authorities related thereto, under CERCLA, RCRA and any other
18 applicable statute or regulations.

19
20 VII. REMEDY REVIEW

21 15. Periodic Review. Settling Defendants shall cooperate with the
22 conduct of any studies and investigations as requested by EPA, in order to permit
23 EPA to conduct reviews of whether the Remedial Action is protective of human
24 health and the environment at least every five years as required by Section 121(c)
25 of CERCLA and any applicable regulations.

26 16. EPA Selection of Further Response Actions. If EPA determines, at
27 any time, that the response actions undertaken pursuant to the Amended ROD are
28 not protective of human health and the environment, EPA may select further
29

1 response actions for the Site in accordance with the requirements of CERCLA and
2 the NCP.

3
4 17. Opportunity To Comment. Settling Defendants and, if required by
5 Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an
6 opportunity to comment on any further remedial actions proposed by EPA as a
7 result of the review conducted pursuant to Section 121(c) of CERCLA and to
8 submit written comments for the record during the comment period.

9 18. Modification of the Land Use Restrictions.

10 a. If EPA determines that modifications or additions to the land
11 use restrictions are necessary to carry out and maintain the effectiveness of the
12 remedy set forth in the Amended ROD, EPA may require that such modifications
13 or additions be incorporated in the land use restrictions, provided, however, that a
14 modification or addition may only be required pursuant to this Paragraph to the
15 extent that it is consistent with the scope of the remedy selected in the Amended
16 ROD.

17
18 b. If Settling Defendants object to any modification or addition
19 determined by EPA to be necessary pursuant to this Paragraph, they may seek
20 dispute resolution pursuant to Section XI (Dispute Resolution), Paragraph 27
21 (record review). The land use restrictions shall be modified in accordance with
22 final resolution of the dispute.

23 c. Settling Defendants shall implement any land use restrictions
24 required by any modifications or additions incorporated in the land use restrictions
25 in accordance with this Paragraph.

26
27 d. Nothing in this Paragraph shall be construed to limit EPA's
28 authority to require performance of further response actions as otherwise provided
29 in this Consent Decree.

1 VIII. REPORTING REQUIREMENTS

2 19. All reports and other documents submitted by Settling Defendants to
3 EPA which purport to document Settling Defendants' compliance with the terms
4 of this Consent Decree shall be signed by an authorized representative of the
5 Settling Defendants.
6

7 X. FORCE MAJEURE

8 20. "Force majeure," for purposes of this Consent Decree, is defined as
9 any event arising from causes beyond the control of the Settling Defendants, or of
10 any entity controlled by Settling Defendants, that delays or prevents the
11 performance of any obligation under this Consent Decree despite Settling
12 Defendants' best efforts to fulfill the obligation. The requirement that the Settling
13 Defendants exercise "best efforts to fulfill the obligation" includes using best
14 efforts to anticipate any potential force majeure event and best efforts to address
15 the effects of any potential force majeure event (1) as it is occurring and (2)
16 following the potential force majeure event, such that the delay is minimized to the
17 greatest extent possible. "Force Majeure" does not include financial inability to
18 complete the Work.
19

20 21. If any event occurs or has occurred that may delay the performance of
21 any obligation under this Consent Decree, whether or not caused by a force
22 majeure event, the Settling Defendants shall notify orally EPA's Project
23 Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in
24 the event both of EPA's designated representatives are unavailable, the Superfund
25 Division Director, EPA Region IX, within five (5) days of when Settling
26 Defendants first knew that the event might cause a delay. Within five (5) days
27 thereafter, Settling Defendants shall provide in writing to EPA an explanation and
28 description of the reasons for the delay; the anticipated duration of the delay; all
29 actions taken or to be taken to prevent or minimize the delay; a schedule for

1 implementation of any measures to be taken to prevent or mitigate the delay or the
2 effect of the delay; the Settling Defendants' rationale for attributing such delay to
3 a force majeure event if it intends to assert such a claim; and a statement as to
4 whether, in the opinion of the Settling Defendants, such event may cause or
5 contribute to an endangerment to public health, welfare or the environment. The
6 Settling Defendants shall include with any notice all available documentation
7 supporting its claim that the delay was attributable to a force majeure. Failure to
8 comply with the above requirements shall preclude Settling Defendants from
9 asserting any claim of force majeure for that event for the period of time of such
10 failure to comply, and for any additional delay caused by such failure. Settling
11 Defendants shall be deemed to know of any circumstance of which Settling
12 Defendants, or any entity controlled by Settling Defendants knew or should have
13 known.

14 22. If EPA agrees that the delay or anticipated delay is attributable to a
15 force majeure event, the time for performance of the obligations under this
16 Consent Decree that are affected by the force majeure event will be extended by
17 EPA for such time as is necessary to complete those obligations. An extension of
18 the time for performance of the obligations affected by the force majeure event
19 shall not, of itself, extend the time for performance of any other obligation. If
20 EPA does not agree that the delay or anticipated delay has been or will be caused
21 by a force majeure event, EPA will notify the Settling Defendants in writing of its
22 decision. If EPA agrees that the delay is attributable to a force majeure event,
23 EPA will notify the Settling Defendants in writing of the length of the extension, if
24 any, for performance of the obligations affected by the force majeure event.
25

26 23. If the Settling Defendants elect to invoke the dispute resolution
27 procedures set forth in Section XI (Dispute Resolution), they shall do so no later
28 than 15 days after receipt of EPA's notice. In any such proceeding, Settling
29 Defendants shall have the burden of demonstrating by a preponderance of the

1 evidence that the delay or anticipated delay has been or will be caused by a force
2 majeure event, that the duration of the delay or the extension sought was or will be
3 warranted under the circumstances, that best efforts were exercised to avoid and
4 mitigate the effects of the delay, and that Settling Defendants complied with the
5 requirements of Paragraphs 21 and 22, above. If Settling Defendants carry this
6 burden, the delay at issue shall be deemed not to be a violation by Settling
7 Defendants of the affected obligation of this Consent Decree identified to EPA
8 and the Court.

9
10 XI. DISPUTE RESOLUTION

11 24. Unless otherwise expressly provided for in this Consent Decree, the
12 dispute resolution procedures of this Section shall be the exclusive mechanism to
13 resolve disputes arising under or with respect to this Consent Decree. However,
14 the procedures set forth in this Section shall not apply to actions by the United
15 States to enforce obligations of the Settling Defendants that have not been
16 disputed in accordance with this Section.

17 25. Any dispute which arises under or with respect to this Consent
18 Decree shall in the first instance be the subject of informal negotiations between
19 the parties to the dispute. The period for informal negotiations shall not exceed 20
20 days from the time the dispute arises, unless it is modified by written agreement of
21 the parties to the dispute. The dispute shall be considered to have arisen when one
22 party sends the other parties a written Notice of Dispute.

23
24 26. Statements of Position.

25 a. In the event that the parties cannot resolve a dispute by
26 informal negotiations under the preceding Paragraph, then the position advanced
27 by EPA shall be considered binding unless, within 15 days after the conclusion of
28 the informal negotiation period, Settling Defendants invoke the formal dispute
29

1 resolution procedures of this Section by serving on the United States a written
2 Statement of Position on the matter in dispute, including, but not limited to, any
3 factual data, analysis or opinion supporting that position and any supporting
4 documentation relied upon by the Settling Defendants. The Statement of Position
5 shall specify the Settling Defendants' position as to whether formal dispute
6 resolution should proceed under Paragraph 28 or Paragraph 29.

7
8 b. Within 15 days after receipt of Settling Defendants' Statement
9 of Position, EPA will serve on Settling Defendants its Statement of Position,
10 including, but not limited to, any factual data, analysis, or opinion supporting that
11 position and all supporting documentation relied upon by EPA. EPA's Statement
12 of Position shall include a statement as to whether formal dispute resolution
13 should proceed under Paragraph 27 or 28. Within 10 days after receipt of EPA's
14 Statement of Position, Settling Defendants may submit a Reply.

15 c. If there is disagreement between EPA and the Settling
16 Defendants as to whether dispute resolution should proceed under Paragraph 27 or
17 28, the parties to the dispute shall follow the procedures set forth in the paragraph
18 determined by EPA to be applicable. However, if the Settling Defendants
19 ultimately appeal to the Court to resolve the dispute, the Court shall determine
20 which paragraph is applicable in accordance with the standards of applicability set
21 forth in Paragraph 27 or 28.

22 27. Formal dispute resolution for disputes pertaining to the selection or
23 adequacy of any response action and all other disputes that are accorded review on
24 the administrative record under applicable principles of administrative law shall be
25 conducted pursuant to the procedures set forth in this Paragraph. For purposes of
26 this Paragraph, the adequacy of any response action includes, without limitation:
27 the adequacy of the performance of response actions taken pursuant to this
28 Consent Decree. Nothing in this Consent Decree shall be construed to allow any
29

1 dispute by Settling Defendants regarding the validity of the Amended ROD's
2 provisions.

3
4 a. An administrative record of the dispute shall be maintained by
5 EPA and shall contain all statements of position, including supporting
6 documentation, submitted pursuant to this Section. Where appropriate, EPA may
7 allow submission of supplemental statements of position by the parties to the
8 dispute.

9 b. The Superfund Division Director, EPA Region IX, will issue a
10 final administrative decision resolving the dispute based on the administrative
11 record described in Paragraph 27.a. This decision shall be binding upon the
12 Settling Defendants, subject only to the right to seek judicial review pursuant to
13 Paragraphs 27.c and d.

14 c. Any administrative decision made by EPA pursuant to
15 Paragraph 27.b. shall be reviewable by this Court, provided that a motion for
16 judicial review of the decision is filed by the Settling Defendants with the Court
17 and served on all Parties within 10 days of receipt of EPA's decision. The motion
18 shall include a description of the matter in dispute, the efforts made by the parties
19 to resolve it, the relief requested, and the schedule, if any, within which the
20 dispute must be resolved to ensure orderly implementation of this Consent Decree.
21 The United States may file a response to Settling Defendants' motion.
22

23 d. In proceedings on any dispute governed by this Paragraph,
24 Settling Defendants shall have the burden of demonstrating that the decision of the
25 Superfund Division Director is arbitrary and capricious or otherwise not in
26 accordance with law. Judicial review of EPA's decision shall be on the
27 administrative record compiled pursuant to Paragraph 27.a.

28 28. Formal dispute resolution for disputes that neither pertain to the
29

1 selection or adequacy of any response action nor are otherwise accorded review on
2 the administrative record under applicable principles of administrative law, shall
3 be governed by this Paragraph.

4
5 a. Following receipt of Settling Defendants' Statement of Position
6 submitted pursuant to Paragraph 26, the Superfund Division Director, EPA Region
7 IX, will issue a final decision resolving the dispute. The Superfund Division
8 Director's decision shall be binding on the Settling Defendants unless, within 10
9 days of receipt of the decision, the Settling Defendants file with the Court and
10 serve on the Parties a motion for judicial review of the decision setting forth the
11 matter in dispute, the efforts made by the parties to resolve it, the relief requested,
12 and the schedule, if any, within which the dispute must be resolved to ensure
13 orderly implementation of the Consent Decree. The United States may file a
14 response to Settling Defendants' motion.

15 b. Judicial review of any dispute governed by this Paragraph shall
16 be governed by applicable principles of law.

17 29. The invocation of formal dispute resolution procedures under this
18 Section shall not extend, postpone or affect in any way any obligation of the
19 Settling Defendants under this Consent Decree, not directly in dispute, unless EPA
20 or the Court agrees otherwise. Stipulated penalties with respect to the disputed
21 matter shall continue to accrue but payment shall be stayed pending resolution of
22 the dispute as provided in Paragraph 36. Notwithstanding the stay of payment,
23 stipulated penalties shall accrue from the first day of noncompliance with any
24 applicable provision of this Consent Decree. In the event that the Settling
25 Defendants do not prevail on the disputed issue, stipulated penalties shall be
26 assessed and paid as provided in Section XII (Stipulated Penalties).
27

28 //

1 XII. STIPULATED PENALTIES

2 30. Settling Defendants shall be liable for stipulated penalties in the
3 amounts set forth in Paragraphs 31 and 32 to the United States for failure to
4 comply with the requirements of this Consent Decree specified below, unless
5 excused under Section X (Force Majeure). "Compliance" by Settling Defendants
6 shall include completion of the activities under this Consent Decree identified
7 below in accordance with all applicable requirements of law and this Consent
8 Decree and within the specified time schedules established by and approved under
9 this Consent Decree.
10

11 31. Stipulated Penalty Amounts -- Work.

12 a. The following stipulated penalties shall accrue per violation per
13 day for any noncompliance identified in Subparagraph 31.b:
14

15 Penalty Per Violation Per Day Period of Noncompliance

16 \$500	1st through 14th day
17 \$1,000	15th through 30th day
18 \$2,500	31st day and beyond

19 b. Compliance Milestones.

20
21 (1) Failure to execute and record the Environmental
22 Restriction Covenant as required by Paragraph 12.
23

24 (2) Failure to use best efforts to obtain release or
25 subordination of all prior liens and encumbrances on the Property, as
26 required by Paragraph 12.a.
27

28 (3) Violation of land/water use restrictions listed in
29

1 Paragraph 11.a.

2 (4) Violation of access provisions of Paragraph 10.a.
3

4 32. All penalties shall begin to accrue on the day after the complete
5 performance is due or the day a violation occurs, and shall continue to accrue
6 through the final day of the correction of the noncompliance or completion of the
7 activity. However, stipulated penalties shall not accrue: (1) with respect to a
8 decision by the Superfund Division Director, EPA Region IX, under
9 Paragraph 27.b or 28.a of Section XI (Dispute Resolution), during the period, if
10 any, beginning on the 21st day after the date that Settling Defendants' reply to
11 EPA's Statement of Position is received until the date that the Director issues a
12 final decision regarding such dispute; or (2) with respect to judicial review by this
13 Court of any dispute under Section XI (Dispute Resolution), during the period, if
14 any, beginning on the 31st day after the Court's receipt of the final submission
15 regarding the dispute until the date that the Court issues a final decision regarding
16 such dispute. Nothing herein shall prevent the simultaneous accrual of separate
17 penalties for separate violations of this Consent Decree.

18 33. Following EPA's determination that Settling Defendants have failed
19 to comply with a requirement of this Consent Decree, EPA may give Settling
20 Defendants written notification of the same and describe the noncompliance. EPA
21 may send the Settling Defendants a written demand for the payment of the
22 penalties. However, penalties shall accrue as provided in the preceding Paragraph
23 regardless of whether EPA has notified the Settling Defendants of a violation.
24

25 34. Settling Defendants shall pay all penalties accruing under this Section
26 to the United States within 30 days of the Settling Defendants' receipt from EPA
27 of a demand for payment of the penalties, unless Settling Defendants invoke the
28 Dispute Resolution procedures under Section XI (Dispute Resolution). All
29 payments to the United States under this Section shall be paid by certified or

1 cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall
2 be mailed to Mellon BankEPA - Region 9, Attn: Superfund Accounting, P.O. Box
3 371099M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated
4 penalties, and shall reference the EPA Region and Site/Spill ID #09-C1, the DOJ
5 Case Number 90-11-2-1000, and the name and address of the party making
6 payment. Copies of checks paid pursuant to this Section, and any accompanying
7 transmittal letter(s), shall be sent to the United States as provided in Section XVIII
8 (Notices and Submissions), and to David Wood, Chief, Cost Accounting, U.S.
9 EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105.

10 35. The payment of penalties shall not alter in any way Settling
11 Defendants' obligation to complete the performance of the Work required under
12 this Consent Decree.

13 36. Penalties shall continue to accrue as provided in Paragraph 32 during
14 any dispute resolution period, but need not be paid until the following:
15

16 a. If the dispute is resolved by agreement or by a decision of EPA
17 that is not appealed to this Court, accrued penalties determined to be owing shall
18 be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or
19 order;

20 b. If the dispute is appealed to this Court and the United States
21 prevails in whole or in part, Settling Defendants shall pay all accrued penalties
22 determined by the Court to be owed to EPA within 60 days of receipt of the
23 Court's decision or order, except as provided in Subparagraph c. below;
24

25 c. If the District Court's decision is appealed by any Party,
26 Settling Defendants shall pay all accrued penalties determined by the District
27 Court to be owing to the United States into an interest-bearing escrow account
28 within 60 days of receipt of the Court's decision or order. Penalties shall be paid
29 into this account as they continue to accrue, at least every 60 days. Within 15 days

1 of receipt of the final appellate court decision, the escrow agent shall pay the
2 balance of the account to EPA or to Settling Defendants to the extent that they
3 prevail.

4 37. If Settling Defendants fail to pay stipulated penalties when due, the
5 United States may institute proceedings to collect the penalties, as well as interest.
6 Settling Defendants shall pay Interest on the unpaid balance, which shall begin to
7 accrue on the date of demand made pursuant to Paragraph 33.
8

9 38. Nothing in this Consent Decree shall be construed as prohibiting,
10 altering, or in any way limiting the ability of the United States to seek any other
11 remedies or sanctions available by virtue of Settling Defendants' violation of this
12 Decree or of the statutes and regulations upon which it is based, including, but not
13 limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however,
14 that the United States shall not seek civil penalties pursuant to Section 122(l) of
15 CERCLA for any violation for which a stipulated penalty is provided herein,
16 except in the case of a willful violation of the Consent Decree.

17 39. Notwithstanding any other provision of this Section, the United States
18 may, in its unreviewable discretion, waive any portion of stipulated penalties that
19 have accrued pursuant to this Consent Decree.
20

21 XIII. COVENANTS NOT TO SUE BY PLAINTIFF

22 40. United States' Covenant Not to Sue. In consideration of the actions
23 that will be performed by the Settling Defendants under the terms of the Consent
24 Decree, and except as specifically provided in Paragraphs 41, 42, 44, and 45 of
25 this Section, the United States covenants not to sue or to take administrative action
26 against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA
27 relating to the Site. Except with respect to future liability, these covenants not to
28 sue shall take effect upon the recording of the Environmental Restriction Covenant
29

1 required by Paragraph 12 of Section VI (Access and Institutional Controls). With
2 respect to future liability, these covenants not to sue shall take effect upon
3 certification of the completion of the Remedial Action by EPA, which shall occur
4 when Remedial Action for the Site has been completed. These covenants not to
5 sue are conditioned upon the satisfactory performance by Settling Defendants of
6 their obligations under this Consent Decree. These covenants not to sue extend
7 only to the Settling Defendants and do not extend to any other person.

8
9 41. United States' Pre-certification Reservations. Notwithstanding any
10 other provision of this Consent Decree, the United States reserves, and this
11 Consent Decree is without prejudice to, the right to institute proceedings in this
12 action or in a new action, or to issue an administrative order seeking to compel
13 Settling Defendants

14 a. to perform further response actions relating to the Site, or

15 b. to reimburse the United States for additional costs of response if,
16 prior to Certification of Completion of the Remedial Action:

17
18 (1) conditions at the Site, previously unknown to EPA, are
19 discovered, or

20 (2) information, previously unknown to EPA, is received, in
21 whole or in part,

22
23 and EPA determines that these previously unknown conditions or information
24 together with any other relevant information indicates that the Remedial Action is
25 not protective of human health or the environment.

26
27 42. United States' Post-certification Reservations. Notwithstanding any
28 other provision of this Consent Decree, the United States reserves, and this
29 Consent Decree is without prejudice to, the right to institute proceedings in this

1 action or in a new action, or to issue an administrative order seeking to compel
2 Settling Defendants

3 a. to perform further response actions relating to the Site, or

4
5 b. to reimburse the United States for additional costs of response if,
6 subsequent to certification of completion of the Remedial Action:

7 (1) conditions at the Site, previously unknown to EPA, are
8 discovered, or

9
10 (2) information, previously unknown to EPA, is received, in
11 whole or in part,

12 and EPA determines that these previously unknown conditions or this information
13 together with other relevant information indicate that the Remedial Action is not
14 protective of human health or the environment.

15
16 43. For purposes of Paragraph 41, the information and the conditions
17 known to EPA shall include only that information and those conditions known to
18 EPA as of the date the Amended ROD was signed and set forth in the Amended
19 Record of Decision for the Site and the administrative record supporting the
20 Amended Record of Decision. For purposes of Paragraph 42, the information and
21 the conditions known to EPA shall include only that information and those
22 conditions known to EPA as of the date of certification of completion of the
23 Remedial Action and set forth in the Amended Record of Decision, the
24 administrative record supporting the Amended Record of Decision, the post-
25 Amended ROD administrative record, or in any information received by EPA
26 pursuant to the requirements of this Consent Decree prior to certification of
27 completion of the Remedial Action.

28 44. Notwithstanding any other provision of this Consent Decree, EPA
29

1 reserves, and this Consent Decree is without prejudice to, the right to reinstitute or
2 reopen this action, or to commence a new action seeking relief other than as
3 provided in this Consent Decree, if the Financial Information provided by Settling
4 Defendants, or the financial certification made by Settling Defendants in
5 Paragraph 6(b), is false or, in an material respect, inaccurate.

6
7 45. United States' General Reservations of Rights. The United States
8 reserves, and this Consent Decree is without prejudice to, all rights against
9 Settling Defendants with respect to all matters not expressly included within the
10 United States' covenants not to sue. Notwithstanding any other provision of this
11 Consent Decree, the United States reserves all rights against Settling Defendants
12 with respect to:

13 a. claims based on a failure by Settling Defendants to meet a
14 requirement of this Consent Decree;

15 b. liability arising from the past, present, or future disposal,
16 release, or threat of release of Waste Material outside of the Site;

17
18 c. liability for damages for injury to, destruction of, or loss of
19 natural resources, and for the costs of any natural resource damage assessments;

20 d. criminal liability;

21
22 e. liability for violations of federal or state law which occur
23 during or after implementation of the Work; and

24 f. liability, prior to Certification of Completion of the Remedial
25 Action, for additional response actions that EPA determines are necessary to
26 achieve Performance Standards, but that cannot be required pursuant to
27 Paragraph 18 (Modification of the Land Use Restrictions).
28

29 46. Notwithstanding any other provision of this Consent Decree, the

1 United States retains all authority and reserves all rights to take any and all
2 response actions authorized by law.

3
4 XIV. COVENANTS BY SETTLING DEFENDANTS

5 47. Covenant Not to Sue. Subject to the reservations in Paragraph 48,
6 Settling Defendants hereby covenant not to sue and agree not to assert any claims
7 or causes of action against the United States with respect to the Site or this
8 Consent Decree, including, but not limited to:

9 a. any direct or indirect claim for reimbursement from the
10 Hazardous Substance Superfund (established pursuant to the Internal Revenue
11 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113
12 or any other provision of law;

13
14 b. any claims against the United States, including any department,
15 agency or instrumentality of the United States, under CERCLA Sections 107 or
16 113 related to the Site;

17 c. any claims arising out of response actions at or in connection
18 with the Site, including any claim under the United States Constitution, the
19 California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
20 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
21

22 Except as provided in Paragraph 54 (Waiver of Claim-Splitting Defenses),
23 these covenants not to sue shall not apply in the event that the United States brings
24 a cause of action or issues an order pursuant to the reservations set forth in
25 Paragraphs 41, 42, 44, and 45(b) - (c) but only to the extent that Settling
26 Defendants' claims arise from the same response action, response costs, or
27 damages that the United States is seeking pursuant to the applicable reservation.

28 48. The Settling Defendants reserve, and this Consent Decree is without
29

1 prejudice to, claims against the United States, subject to the provisions of Chapter
2 171 of Title 28 of the United States Code, for money damages for injury or loss of
3 property or personal injury or death caused by the negligent or wrongful act or
4 omission of any employee of the United States while acting within the scope of his
5 office or employment under circumstances where the United States, if a private
6 person, would be liable to the claimant in accordance with the law of the place
7 where the act or omission occurred. However, any such claim shall not include a
8 claim for any damages caused, in whole or in part, by the act or omission of any
9 person, including any contractor, who is not a federal employee as that term is
10 defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on
11 EPA's selection of response actions, or the oversight or approval of the Settling
12 Defendants' activities. The foregoing applies only to claims which are brought
13 pursuant to any statute other than CERCLA and for which the waiver of sovereign
14 immunity is found in a statute other than CERCLA.

15 49. Nothing in this Consent Decree shall be deemed to constitute
16 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
17 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

18
19 XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

20 50. Nothing in this Consent Decree shall be construed to create any rights
21 in, or grant any cause of action to, any person not a Party to this Consent Decree.
22 The preceding sentence shall not be construed to waive or nullify any rights that
23 any person not a signatory to this decree may have under applicable law. Each of
24 the Parties expressly reserves any and all rights (including, but not limited to, any
25 right to contribution), defenses, claims, demands, and causes of action which each
26 Party may have with respect to any matter, transaction, or occurrence relating in
27 any way to the Site against any person not a Party hereto.

28
29 51. The Parties agree, and by entering this Consent Decree this Court

1 finds, that the Settling Defendants are entitled, as of the Effective Date, to
2 protection from contribution actions or claims as provided by CERCLA Section
3 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree.

4 a. The “matters addressed” in this Consent Decree are all
5 response actions taken or to be taken and all response costs incurred or to be
6 incurred by the United States or any other person with respect to the Site. The
7 “matters addressed” in this Consent Decree do not include those response costs or
8 response actions as to which the United States, or its departments, agencies or
9 instrumentalities have reserved their rights under this Consent Decree (except for
10 claims for failure to comply with this Consent Decree), in the event that the United
11 States asserts rights against Settling Defendants coming within the scope of such
12 reservations.

13
14 52. The Settling Defendants agree that with respect to any suit or claim
15 for contribution brought by it for matters related to this Consent Decree, it will
16 notify the United States in writing no later than 60 days prior to the initiation of
17 such suit or claim.

18
19 53. The Settling Defendants also agree that with respect to any suit or
20 claim for contribution brought against it for matters related to this Consent Decree,
21 it will notify in writing the United States within 10 days of service of the
22 complaint on them. In addition, Settling Defendants shall notify the United States
23 within 10 days of service or receipt of any Motion for Summary Judgment and
24 within 10 days of receipt of any order from a court setting a case for trial.

25 54. In any subsequent administrative or judicial proceeding initiated by
26 the United States for injunctive relief, recovery of response costs, or other
27 appropriate relief relating to the Site, Settling Defendants shall not assert, and may
28 not maintain, any defense or claim based upon the principles of waiver, res
29 judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses

1 based upon any contention that the claims raised by the United States in the
2 subsequent proceeding were or should have been brought in the instant case;
3 provided, however, that nothing in this Paragraph affects the enforceability of the
4 covenants not to sue set forth in Section XIII (Covenants Not to Sue by Plaintiff).

5
6 XVI. ACCESS TO INFORMATION

7 55. Settling Defendants shall provide to EPA, upon request, copies of all
8 documents and information within their possession or control or that of their
9 agents relating to activities at the Site or to the implementation of this Consent
10 Decree. Settling Defendants shall also make available to EPA, for purposes of
11 investigation, information gathering, or testimony, its employees, agents, or
12 representatives with knowledge of relevant facts concerning the implementation of
13 this Consent Decree.

14 56. Business Confidential and Privileged Documents.

15
16 a. Settling Defendants may assert business confidentiality claims
17 covering part or all of the documents or information submitted to Plaintiff under
18 this Consent Decree to the extent permitted by and in accordance with Section
19 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
20 Documents or information determined to be confidential by EPA will be afforded
21 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
22 confidentiality accompanies documents or information when they are submitted to
23 EPA, or if EPA has notified Settling Defendants that the documents or information
24 are not confidential under the standards of Section 104(e)(7) of CERCLA or 40
25 C.F.R. Part 2, Subpart B, the public may be given access to such documents or
26 information without further notice to Settling Defendants.

27 b. The Settling Defendants may assert that certain documents,
28 records and other information are privileged under the attorney-client privilege or
29

1 any other privilege recognized by applicable law. If the Settling Defendants assert
2 such a privilege in lieu of providing documents, it shall provide the Plaintiffs with
3 the following: (1) the title of the document, record, or information; (2) the date of
4 the document, record, or information; (3) the name and title of the author of the
5 document, record, or information; (4) the name and title of each addressee and
6 recipient; (5) a description of the contents of the document, record, or information;
7 and (6) the privilege asserted by Settling Defendants. However, no documents,
8 reports or other information created or generated pursuant to the requirements of
9 the Consent Decree shall be withheld on the grounds that they are privileged.

10 57. No claim of confidentiality shall be made with respect to any data,
11 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
12 scientific, chemical, or engineering data, or any other documents or information
13 evidencing conditions at or around the Site.
14

15 XVII. RETENTION OF RECORDS

16 58. Until 10 years after the Settling Defendants have caused the
17 Environmental Restriction Covenant to be recorded, as required by Paragraph 12,
18 Settling Defendants shall preserve and retain all non-identical copies of records
19 and documents (including records or documents in electronic form) now in their
20 possession or control or which come into their possession or control that relate in
21 any manner to their liability under CERCLA with respect to the Site, provided,
22 however, that Settling Defendants must retain, in addition, all documents and
23 records that relate to the liability of any other person under CERCLA with respect
24 to the Site. Each of the above record retention requirements shall apply regardless
25 of any corporate retention policy to the contrary.
26

27 59. At the conclusion of this document retention period, Settling
28 Defendants shall notify the United States at least 90 days prior to the destruction
29 of any such records or documents, and, upon request by the United States, Settling

1 Defendants shall deliver any such records or documents to EPA. The Settling
2 Defendants may assert that certain documents, records and other information are
3 privileged under the attorney-client privilege or any other privilege recognized by
4 federal law. If the Settling Defendants assert such a privilege, they shall provide
5 the Plaintiff with the following: (1) the title of the document, record, or
6 information; (2) the date of the document, record, or information; (3) the name and
7 title of the author of the document, record, or information; (4) the name and title of
8 each addressee and recipient; (5) a description of the subject of the document,
9 record, or information; and (6) the privilege asserted by Settling Defendants.
10 However, no documents, reports or other information created or generated
11 pursuant to the requirements of the Consent Decree shall be withheld on the
12 grounds that they are privileged.

13
14 60. Each Settling Defendant hereby certifies that, to the best of its
15 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
16 discarded, destroyed or otherwise disposed of any records, documents or other
17 information (other than identical copies) relating to its potential liability regarding
18 the Site since notification of potential liability by the United States regarding the
19 Site and that it has fully complied with any and all EPA requests for information
20 pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and
21 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

22 XVIII. NOTICES AND SUBMISSIONS

23
24 61. Whenever, under the terms of this Consent Decree, written notice is
25 required to be given or a report or other document is required to be sent by one
26 Party to another, it shall be directed to the individuals at the addresses specified
27 below, unless those individuals or their successors give notice of a change to the
28 other Parties in writing. All notices and submissions shall be considered effective
29 upon receipt, unless otherwise provided. Written notice as specified herein shall

1 constitute complete satisfaction of any written notice requirement of the Consent
2 Decree with respect to the United States, EPA, and each Settling Defendant,
3 respectively.

4 As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1000/2

8 and

9 Superfund Division Director
10 United States Environmental Protection Agency
11 Region IX
12 75 Hawthorne St.
13 San Francisco, CA 94105
14 Re: WDI Superfund Site

15 As to EPA:

Russell Mechem
EPA Project Coordinator
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105
Re: WDI Superfund Site

18 As to the Regional Financial
19 Management Officer:

20 David Wood, Chief, Cost Accounting
21 United States Environmental Protection Agency
22 Region IX
23 75 Hawthorne St.
24 San Francisco, CA 94105
25 Re: WDI Superfund Site

26 As to the Settling Defendants:

Gwen Campbell
Gwen Campbell Trust 1995
c/o Christa Huddle
235 E. Blossom Place
Brea, CA 92821

28 //

29 //

1 Diane Cote, Trustee
2 Phil Campbell and Diane Cote Family Trust
3 13068 Caminito Mar Villa
4 Del Mar, CA 92014-3608

5 XVIII. EFFECTIVE DATE

6 62. The effective date of this Consent Decree shall be the date upon
7 which this Consent Decree is entered by the Court, except as otherwise provided
8 herein.
9

10 XIX. RETENTION OF JURISDICTION

11 63. This Court retains jurisdiction over both the subject matter of this
12 Consent Decree and the Settling Defendants for the duration of the performance of
13 the terms and provisions of this Consent Decree for the purpose of enabling any of
14 the Parties to apply to the Court at any time for such further order, direction, and
15 relief as may be necessary or appropriate for the construction or modification of
16 this Consent Decree, or to effectuate or enforce compliance with its terms, or to
17 resolve disputes in accordance with Section XI (Dispute Resolution) hereof.
18

19 XX. APPENDICES

20 64. The following appendices are attached to and incorporated into this
21 Consent Decree:
22

23 "Appendix A" is the Amended ROD.

24 "Appendix B" is the description and map of the Site.

25 "Appendix C" is the Environmental Restriction Covenant.

26 "Appendix D" is the description and map of the Property owned by Settling
27 Defendants.
28
29

1 73. Upon approval and entry of this Consent Decree by the Court, this
2 Consent Decree shall constitute a final judgment between and among the United
3 States and the Settling Defendants. The Court finds that there is no just reason for
4 delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P.
5 54 and 58.

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SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*
2 *Gwen Campbell Trust 1995, Gwen Campbell, individually and as Trustee of the Gwen Campbell*
3 *Trust 1995, the Phil Campbell and Diane Cote Family Trust, and Diane Cote, as Trustee of the*
4 *Phil Campbell and Diane Cote Family Trust*, relating to the Waste Disposal, Inc. Superfund Site.
5
6

7 **FOR THE UNITED STATES OF AMERICA**
8

9 7/26/07
10 Date

11 Ronald J. Tenpas
12 Acting Assistant Attorney General
13 Environment and Natural Resources Division
14 U.S. Department of Justice
15 Washington, D.C. 20530

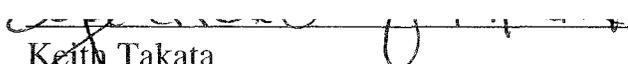
15 07-18-07
16 Date

17 Cheryl Smout
18 Environmental Enforcement Section
19 Environment and Natural Resources Division
20 U.S. Department of Justice
21 P.O. Box 7611
22 Washington, D.C. 20044-7611
23
24
25
26
27
28
29

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*
2 *Gwen Campbell Trust 1995, Gwen Campbell, individually and as Trustee of the Gwen Campbell*
3 *Trust 1995, the Phil Campbell and Diane Cote Family Trust, and Diane Cote, as Trustee of the*
4 *Phil Campbell and Diane Cote Family Trust*, relating to the Waste Disposal, Inc. Superfund Site.
5

6
7 **FOR THE UNITED STATES OF AMERICA**
8
9

10
11 May 17, 2007
Date


Keith Takata
Director, Superfund Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

12
13
14
15
16
17
18 May 16, 2007
Date


Taly L. Jolish
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*
2 *Gwen Campbell Trust 1995, Gwen Campbell, individually and as Trustee of the Gwen Campbell*
3 *Trust 1995, the Phil Campbell and Diane Cote Family Trust, and Diane Cote, as Trustee of the*
4 *Phil Campbell and Diane Cote Family Trust, relating to the Waste Disposal, Inc. Superfund Site.*

6 **FOR GWEN CAMPBELL TRUST 1995 and GWEN CAMPBELL,**
7 **Individually and as Trustee for the GWEN CAMPBELL TRUST 1995**

11 4/7/07
12 Date

Signature: _____
Name (print): Gwen Campbell
Title: _____
Address: 2481 Sommerset Dr.
Brea, CA 92821

18 Agent Authorized to Accept Service on Behalf of Above-signed Party:

20 Name (print): _____
21 Title: _____
22 Address: _____
23 _____
24 _____
25 Ph. Number: _____

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*
2 *Gwen Campbell Trust 1995, Gwen Campbell, individually and as Trustee of the Gwen Campbell*
3 *Trust 1995, the Phil Campbell and Diane Cote Family Trust, and Diane Cote, as Trustee of the*
4 *Phil Campbell and Diane Cote Family Trust*, relating to the Waste Disposal, Inc. Superfund Site.
5
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7

8 **FOR PHIL CAMPBELL AND DIANE COTE FAMILY TRUST and DIANE**
9 **COTE, as Trustee for the PHIL CAMPBELL AND DIANE COTE FAMILY**
10 **TRUST**

11
12
13 Dec 20th 06

14 Date

Signature: l

Name (print): DIANE COTE

Title: TRUSTEE

Address: 13068 CAMINITO MAR VILLA
DEL MAR, CA-
92014-3608

15
16
17
18
19
20 Agent Authorized to Accept Service on Behalf of Above-signed Party:

21
22 Name (print): _____

Title: _____

23 Address: _____

24
25
26 Ph. Number: _____